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IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

No. 609

MINNIE B. VAN DUSEN,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

JOSEPH E. DAVIES,
RAYMOND N. BEEBE,
RAYMOND H. BERRY,
ARTHUR L. EVELY,
Counsel for Petitioner.

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COMMISSIONER OF INTERNAL REVENUE.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

Minnie B. Van Dusen, by her counsel, respectfully prays that a writ of certiorari issue from this Court to review the judgment of the United States Circuit Court of Appeals for the Sixth Circuit entered in the above-entitled

cause on October 18, 1943, which judgment reversed a decision of the United States Board of Tax Appeals.

A.

Summary Statement of the Matter Involved.

Petitioner filed a petition in the United States Board of Tax Appeals (now The Tax Court of the United States) on December 21, 1940, for the redetermination of deficiencies in individual income taxes determined by the Commissioner of Internal Revenue for the calendar years 1936 and 1937 in the amounts of $21,296.51 and $10,159.83, respectively. On the same date petitioner filed in the United States Board of Tax Appeals a petition for the redetermination of a deficiency in individual income tax for the calendar year 1938 in the amount of $9,070.87, likewise determined by the Commissioner of Internal Revenue. All of these deficiencies resulted in the main from the determination by the Commissioner that a portion of the income of a certain trust created by petitioner as donor was taxable to her and not to the trustees of said trust. The portion of the income of the trust which the Commissioner determined to constitute income taxable to petitioner was that portion used to pay premiums on certain life insurance policies owned by the trust under which the petitioner was not the insured.

The two above cases were consolidated for hearing and decision and were heard by the United States Board of Tax Appeals on September 18, 1941. On June 20, 1942,

the United States Board of Tax Appeals entered its Memorandum Findings of Fact and Opinion (R. 39) in which it held that the income of the trust, used to pay premiums on life insurance policies not on the life of the grantor, was not taxable to the grantor under Section 167(a) of the Revenue Acts of 1936 and 1938. Accordingly, on August 3, 1942, the United States Board of Tax Appeals entered its orders determining that there were no deficiencies in individual income tax due from petitioner for the calender years 1936 and 1937 and determining a deficiency in income tax for the calendar year 1938 in the amount of $5.15, which deficiency was not based on the inclusion of any part of the income of said trust in the taxable income of petitioner but related to issues which were conceded (R. 44).

On October 23, 1942, the Commissioner of Internal Revenue filed a petition for the review of these decisions of the United States Board of Tax Appeals by the United States Circuit Court of Appeals for the Sixth Circuit. The said cause was entered and docketed in said Circuit Court of Appeals under the title "Commissioner of Internal Revenue, Petitioner, vs. Minnie B. Van Dusen, Respondent," and numbered 9480 on said docket.

Thereafter on October 14, 1943, the cause came on for hearing in the United States Circuit Court of Appeals for the Sixth Circuit before the Honorable Florence E. Allen, the Honorable Elwood Hamilton, and the Honorable John D. Martin. At the same time, a case involving a similar trust created by Charles B. Van Dusen was also heard by the Court. On October 18, 1943, a judgment was entered in both cases by said Circuit Court of Appeals reversing the decisions of the United States Board of Tax Appeals. No separate opinion was entered by said Court. The judgment aforesaid reads in full as follows:

"These companion cases came on to be heard upon the records and briefs and oral argument of counsel, it being stipulated by the parties in open court that the cases involve identical legal questions and that they should be forthwith heard, submitted and decided as one case.

On consideration whereof, it appearing that the Commissioner decided correctly in each case that the income of the trust for the taxable years, used to pay premiums on life insurance policies included in the trust estate, is taxable to the respondent under Sections 22(a) and 167(a) of the Revenue Acts of 1936 and 1938; Helvering v. Clifford, 309 U. S. 331; Helvering v. Horst, 311 U. S. 112; Helvering v. Stuart, 317 U. S. 154; Altmaier v. Commissioner, 116 Fed. (2d) 162 (C.C.A. 6), cert. denied 312 U. S. 706; Price v. Commissioner, 132 Fed. (2d) 95 (C.C.A. 6); Commissioner v. Wilson, 132 Fed. (2d) 255 (C.C.A. 6):

It is ordered, adjudged and decreed that the decision of the United States Board of Tax Appeals, now the Tax Court of the United States, be and it hereby is reversed and the case is remanded to the Tax Court of the United States for further proceedings in accordance with the statute and the order of this court."

B.

Statement As to the Jurisdiction.

The jurisdiction of this Court is invoked under Section 240 of the Judicial Code as amended by the Act of February 13, 1925 (43 Stat. 938), 28 U. S. C. 347, and June 7, 1934 (48 Stat. 926).

C.

The Questions Presented.

The questions involved in this proceeding are as follows:

1. Whether the United States Circuit Court of Appeals for the Sixth Circuit was in error in reversing the decision of the United States Board of Tax Appeals that petitioner, as grantor, is not subject to taxation on the income of a trust used to pay premiums on life insurance policies not on her life under Section 167 of the Revenue Acts of 1936 and 1938.

2. Whether the United States Circuit Court of Appeals for the Sixth Circuit was in error in reversing the United States Board of Tax Appeals and deciding that petitioner, as grantor, is subject to taxation on the income of a long-term trust which is not distributable to her or to members of her family and in which she retains no rights of reversion and no elements of control under Section 22(a) of the Revenue Acts of 1936 and 1938.

3. Whether the United States Circuit Court of Appeals for the Sixth Circuit was in error in reversing the decision of the United States Board of Tax Appeals without any determination that the Board's findings of fact were not supported by the evidence or any specification of errors of law in the Board's opinion.

D.

Reasons Relied On for the Allowance of Writ.

1. The judgment of the United States Circuit Court of Appeals for the Sixth Circuit in the instant case is in direct conflict with the decision of the United States Circuit Court of Appeals for the Fifth Circuit in the case of *Commissioner of Internal Revenue v. Amy B. Jergens*, 127 Fed. (2d) 973, affirming a Memorandum Opinion of the United States Board of Tax Appeals entered May 28, 1941. In the *Jergens* case the United States Board of Tax Appeals and the United States Circuit Court of Appeals for the Fifth Circuit determined that the grantor of an insurance trust was not taxable under Section 167 of the Revenue Acts of 1936 and 1938 in respect to the income of such trust, to the extent that such income was used to pay premiums on life insurance policies which were not upon her life. The insurance policies which constituted a part of the corpus of the trust in the *Jergens* case were upon the life of the husband of the grantor. The United States Circuit Court of Appeals for the Fifth Circuit likewise decided that the grantor retained no economic interest in the policies and, accordingly, was not subject to tax on the income of the trust under Section 22(a) of the Revenue Acts of 1936 and 1938. Since the facts in the instant case are not distinguishable in any material particular from the facts in the *Jergens* case, there is a direct conflict between the decision of the Circuit Court of Appeals for the Sixth Circuit in the instant case and that of the Circuit Court of Appeals for the Fifth Circuit in the *Jergens* case. This conflict of decisions in a matter

of vital importance to grantors of insurance trusts warrants the granting of this petition.

2. The Court below has decided an important question of Federal law which has not been, but which should be settled by this Court, namely, that income from a trust, used to pay premiums on life insurance policies, not on the life of the grantor, included in the trust estate, is taxable to the grantor.

Neither Section 167 nor 22(a) of the Revenue Acts of 1936 and 1938 provide for the taxation of the income of trusts to the grantors thereof in circumstances such as those here present. Section 167(a)(3) provides that a grantor shall be subject to tax on the income of a life insurance trust where the policies of life insurance in question are on the life of the grantor himself. The Court has erroneously held that this section imposes tax on the grantor where the policies are *not* on his life. This decision is in direct contravention of the statute. This application of Section 167 to the facts of the instant case constitutes a misinterpretation of a Federal statute of sufficient gravity to warrant the intervention of this Court.

3. While there is no printed opinion in the Court below, the citation of authorities in the judgment indicates that the Court misinterpreted and misapplied a decision or decisions of this Court.

In the case of *Helvering v. Clifford*, 309 U. S. 331, cited by the Court below, this Court determined that the income of a short-term trust over which the grantor had retained extensive elements of control and the corpus of which reverted to him upon its termination was taxable to the grantor under the provisions of Section 22(a) of the

Revenue Act of 1934. The Circuit Court of Appeals for the Sixth Circuit has erred in attempting to apply this principle in the instant case where the trust is not a short-term trust, where the grantor retained no element of control whatsoever, where there is no possibility of reversion of the trust corpus to her, *and where the income in question is neither distributable to her nor to any member of her family nor expendable for her benefit.* The application of Section 22(a) to the facts of the instant case threatens an extension of the principle enunciated by this Court in the *Clifford* case to trusts possessing real substance and where the grantor has retained no substantial economic benefits. This unwarrantably expands by judicial action the class of trusts, the income of which was determined by the Congress to be taxable to the grantors thereof. Such an extension of the application of Section 22(a) threatens to impose upon the grantors of all trusts created for the benefit of members of their families, tax liabilities never contemplated in the enactment of the Revenue Statutes. Moreover, the decision in the instant case constitutes an extension of the application of the Clifford principle to a point much beyond that which has been approved by certain other Circuit Courts of Appeal. The seriousness of this threatened imposition upon trust grantors and the substantial variations among the Circuit Courts of Appeal in their interpretation of the Clifford principle likewise warrant the intervention of this Court.

4. The United States Circuit Court of Appeals for the Sixth Circuit reversed the decision of the United States Board of Tax Appeals in the instant case through the entry of a judgment stating that the income of the trust in question was taxable to petitioner under Sections 22(a) and 167(a) of the Revenue Acts of 1936 and 1938 and remanded the case to the United States Board of Tax

Appeals without the entry of any opinion and without setting forth any reasons for its determination that the decision of the United States Board of Tax Appeals was erroneous. The judgment of the Circuit Court of Appeals for the Sixth Circuit is not consistent with the facts found by the Board of Tax Appeals. Nevertheless, the Circuit Court of Appeals did not determine that the Board's findings of fact and opinion were unsupported by the evidence nor did it find facts supporting its own judgment. This action constitutes a reversible error and departs so far from the accepted and usual practice of appellate tribunals as to warrant the intervention of this Court.

E.

Assignments of Error.

1. The United States Circuit Court of Appeals for the Sixth Circuit erred in determining that petitioner is subject to tax on the income of a trust used to pay premiums on life insurance policies not on her own life, under Section 167(a) of the Revenue Acts of 1936 and 1938.

2. The United States Circuit Court of Appeals for the Sixth Circuit erred in determining that petitioner is subject to tax on the income of a long-term trust which is not distributable to her, nor to members of her family and in which she retained no rights of reversion and no elements of control, under Section 22(a) of the Revenue Acts of 1936 and 1938.

3. The United States Circuit Court of Appeals for the

Sixth Circuit erred in reversing the decision of the United States Board of Tax Appeals without the entry of an opinion specifying findings of fact in support of its judgment or specifying errors of law in the Board's opinion.

WHEREFORE, petitioner prays that a writ of certiorari to the Circuit Court of Appeals for the Sixth Circuit be granted.

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